

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHELLE ROSENFELD and HERBERT ROSENFELD,

Plaintiff,

-VS-

EDEN FARMS, JAMES GASTON, GAST HOUSE, LLC,
200 EAST 75TH STREET REALTY, HYS MARKET CORP.
and JOWNY MARKET CORP.,

Defendants.

07 CIV. 3347 (DC)

**ANSWER CONTAINING
CROSS CLAIMS AND
AFFIRMATIVE
DEFENSES**

ECF CASE

**DEFENDANT JOWNY MARKET CORP.
BY ITS ATTORNEY, THE LAW OFFICE OF JONATHAN Y. SUE,
FOR ITS ANSWER HEREIN:**

JURISDICTION

FIRST: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraphs numbered: **1; 2 and 3** of the complaint herein.

STATEMENT OF CLAIM

SECOND: Denies each and every allegation contained within the Paragraphs numbered: **4; 5; 6; 7; 8** and the *ad damnum* paragraph of the complaint herein.

THIRD: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraphs numbered: **1; 2 and 3** of the complaint herein.

AS AND FOR A CROSS CLAIM AGAINST CO-DEFENDANTS

FOURTH: Upon information and belief, that if and in the event plaintiffs have suffered

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the injuries and damages complained of, such injuries and damages were caused in whole in part by reason of the wrongful conduct of co-defendants Eden Farms, James Gaston, Gast House, LLC, 200 East 75th Street Realty and/or HYS Market Corp., there being no active or primary wrong-doing on the part of Defendant JOWNY MARKET CORP. contributing thereto.

FIFTH: By reason of the foregoing, Defendant JOWNY MARKET CORP. is entitled to full indemnity and/or contribution from, and to judgment over and against defendants Eden Farms, James Gaston, Gast House, LLC, 200 East 75th Street Realty and/or HYS Market Corp., for all or part of any verdict or judgment which plaintiffs may recover against Defendant JOWNY MARKET CORP.

AS AND FOR A FIRST SEPARATE AFFIRMATIVE COMPLETE AND/OR PARTIAL DEFENSE, DEFENDANT JOWNY MARKET CORP. ALLEGES:

SIXTH: That, the plaintiffs' complaint fails to set forth facts sufficient upon which to base a cause of action against the defendant.

SEVENTH: As a result of the foregoing, the plaintiffs' complaint must be dismissed as a matter of law.

AS AND FOR A SECOND SEPARATE AFFIRMATIVE COMPLETE AND/OR PARTIAL DEFENSE, DEFENDANT JOWNY MARKET CORP. ALLEGES:

EIGHTH: Plaintiffs' alleged injuries and damages were caused by the culpable conduct of some third person(s) over whom Defendant JOWNY MARKET CORP. neither had nor exercised control.

NINTH: As a result of the foregoing, plaintiffs' complaint must be dismissed as a matter of law.

AS AND FOR A THIRD SEPARATE AFFIRMATIVE COMPLETE AND/OR PARTIAL DEFENSE, DEFENDANT JOWNY MARKET CORP. ALLEGES:

TENTH: Plaintiffs are barred from bringing this action based on the doctrine of

Laches.

ELEVENTH: As a result of the foregoing, plaintiffs' complaint must be dismissed as a matter of law.

AS AND FOR A FOURTH SEPARATE AFFIRMATIVE COMPLETE AND/OR PARTIAL DEFENSE, DEFENDANT JOWNY MARKET CORP. ALLEGES:

TWELFTH: Statute of limitations.

THIRTEENTH: As a result of the foregoing, plaintiffs' complaint must be dismissed as a matter of law.

AS AND FOR A FIFTH SEPARATE AFFIRMATIVE COMPLETE AND/OR PARTIAL DEFENSE, DEFENDANT JOWNY MARKET CORP. ALLEGES:

FOURTEENTH: Defendant JOWNY MARKET CORP. reserves the right to assert additional defenses as plaintiffs' claims are clarified in the course of this litigation.

WHEREFORE, Defendant JOWNY MARKET CORP. respectfully demand judgment as follows:

(a) dismissing plaintiffs' complaint with prejudice, together with the costs and disbursements of this action and reasonable attorneys' fees;

(b) sanctions pursuant to FRCP RULE 11 against plaintiffs and/or their counsel for filing of frivolous action as plaintiffs and/or their counsel were previously advised of and provided documentary evidence of Defendant JOWNY MARKET CORP.'s purchase of assets from co-defendant HYS Market Corp., on or about July 25, 2006 (a date after the alleged accident) ; and

(c) such other and further relief in favor of Defendant JOWNY MARKET CORP. as this Court may deem just and proper.

Dated: New York, New York
July 16, 2008

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/s/ Jonathan Sue

By: Jonathan Y. Sue (JS / 0738)
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